

77-32-101. Indigent Defense Act.

This chapter is known as the "Indigent Defense Act."

Enacted by Chapter 354, 1997 General Session

77-32-201. Definitions.

For the purposes of this chapter:

(1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

(2) "Compelling reason" shall include one or more of the following circumstances relating to the contracting attorney:

- (a) a conflict of interest;
- (b) the contracting attorney does not have sufficient expertise to provide an effective defense of the indigent; or
- (c) the legal defense is insufficient or lacks expertise to provide a complete defense.

(3) "Defense resources" means a competent investigator, expert witness, scientific or medical testing, or other appropriate means necessary, for an effective defense of an indigent, but does not include legal counsel.

(4) "Defense services provider" means a legal aid association, legal defender's office, regional legal defense association, law firm, attorney, or attorneys contracting with a county or municipality to provide legal defense and includes any combination of counties or municipalities to provide regional legal defense.

(5) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.

(6) "Legal aid association" means a nonprofit defense association or society that provides legal defense for indigent defendants.

(7) "Legal defender's office" means a division of county government created and authorized by the county legislative body to provide legal representation in criminal matters to indigent defendants.

(8) "Legal defense" means to:

- (a) provide defense counsel for each indigent who faces the potential deprivation of the indigent's liberty;
- (b) afford timely representation by defense counsel;
- (c) provide the defense resources necessary for a complete defense;
- (d) assure undivided loyalty of defense counsel to the client;
- (e) provide a first appeal of right; and
- (f) prosecute other remedies before or after a conviction, considered by defense counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

(9) "Participating county" means a county which has complied with the provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

(10) "Regional legal defense" means a defense services provider which

provides legal defense to any combination of counties or municipalities through an interlocal cooperation agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection 77-32-306(3).

(11) "Serious offense" means a felony or capital felony.

Amended by Chapter 180, 2012 General Session

77-32-202. Procedure for determination of indigency -- Standards.

(1) A determination of indigency or continuing indigency of any defendant may be made by the court at any stage of the proceedings.

(2) (a) Any defendant claiming indigency who is charged with a crime the penalty of which is a class A misdemeanor or serious offense shall file with the court a fully complete affidavit verified by a notary or other person authorized by law to administer an oath and file a copy of that affidavit with the prosecuting entity. The affidavit shall contain the factual information required in this section and by the court.

(b) A defendant claiming indigency who is charged with a crime the penalty of which is less than a class A misdemeanor is not required to comply with the requirements of Subsection (2)(a) and Subsection (4).

(3) (a) "Indigency" means that a person:

(i) does not have sufficient income, assets, credit, or other means to provide for the payment of legal counsel and all other necessary expenses of representation without depriving that person or the family of that person of food, shelter, clothing, and other necessities; or

(ii) has an income level at or below 150% of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services; and

(iii) has not transferred or otherwise disposed of any assets since the commission of the offense with the intent of establishing eligibility for the appointment of counsel under this chapter.

(b) In making a determination of indigency, the court shall consider:

(i) the probable expense and burden of defending the case;

(ii) the ownership of, or any interest in, any tangible or intangible personal property or real property, or reasonable expectancy of any such interest;

(iii) the amounts of debts owned by the defendant or that might reasonably be incurred by the defendant because of illness or other needs within the defendant's family;

(iv) number, ages, and relationships of any dependents;

(v) the reasonableness of fees and expenses charged to the defendant by the defendant's attorney and the scope of representation undertaken where the defendant is represented by privately retained defense counsel; and

(vi) other factors considered relevant by the court.

(4) (a) Upon making a finding of indigence, the court shall enter the findings on the record and enter an order assigning a defense services provider to represent the defendant in the case.

(b) Upon finding indigence when the defendant has privately retained counsel,

the court, subject to Section 77-32-303, shall enter the findings into the record and issue an order directing the county or municipality to coordinate the providing of defense resources as appropriate.

(c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor and to the county clerk or municipal recorder.

(5) If the county or municipality providing the defense services provider has any objections to or concerns with the finding of indigency and assignment of a defense services provider or the continuing of indigency status and assignment of a defense services provider, it shall file notice with the court and a hearing shall be scheduled to review the findings and give the county or municipality the opportunity to present evidence and arguments as to the reasons the finding of indigency should be reversed and the court shall proceed as provided in Section 77-32-302.

(6) (a) If the trial court finds within one year after the determination of indigency that any defendant was erroneously or improperly determined to be indigent, the county or municipality may proceed against that defendant for the reasonable value of the services rendered to the defendant, including all costs paid by the county or municipality in providing the legal defense.

(b) Subsection (6)(a) does not affect any restitution required of the defendant by the court pursuant to Chapter 32a, Defense Costs.

(c) A defendant claiming indigency has a continuing duty to inform the court of any material changes or change in circumstances that may affect the determination of his eligibility for indigency.

(d) Any person who intentionally or knowingly makes a material false statement or omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.

Amended by Chapter 245, 2013 General Session

77-32-301. Minimum standards for defense of an indigent.

(1) Each county, city, and town shall provide for the legal defense of an indigent in criminal cases in the courts and various administrative bodies of the state in accordance with legal defense standards as defined in Subsection 77-32-208(8).

(2) (a) A county or municipality which contracts with a defense services provider shall provide that all legal defense elements be included as a single package of legal defense services made available to indigents, except as provided in Sections 77-32-302 and 77-32-303.

(b) When needed to avoid a conflict of interest between:

(i) trial counsel and counsel on appeal, a defense services provider contract shall also provide for separate trial and appellate counsel; and

(ii) counsel for co-defendants, a defense services provider contract shall also provide for separate trial counsel.

(c) If a county or municipality contracts to provide all legal defense elements as a single package, a defendant may not receive funding for defense resources unless represented by publicly funded counsel or as provided in Subsection 77-32-303(2).

Amended by Chapter 180, 2012 General Session

77-32-302. Assignment of counsel on request of indigent or order of court.

(1) The defense services provider shall be assigned to represent each indigent and shall provide the legal defense services necessary for an effective defense, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

- (a) the indigent requests legal defense; or
- (b) the court on its own motion or otherwise orders legal defense services and the defendant does not affirmatively waive or reject on the record the opportunity to be provided legal defense.

(2) (a) If a county responsible for providing indigent legal defense has established a county legal defender's office and the court has received notice of the establishment of the office, the court shall assign to the county legal defender's office the responsibility to defend indigent defendants within the county and provide defense resources.

(b) If the county or municipality responsible to provide for the legal defense of an indigent has arranged by contract to provide those services through a defense services provider, and the court has received notice or a copy of the contract, the court shall assign the defense services provider named in the contract to provide legal defense.

(c) If no county or municipal defense services provider contract exists, the court shall select and assign a legal defense provider.

(d) If the court considers the assignment of a noncontracting legal defense provider to an indigent defendant despite the existence of a defense services provider contract and the court has a copy or notice of the contract, before the court may make the assignment, it shall:

- (i) set the matter for a hearing;
- (ii) give proper notice of the hearing to the attorney of the responsible county or municipality and county clerk or municipal recorder; and
- (iii) make findings that there is a compelling reason to appoint a noncontracting attorney.

(e) The indigent's preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting defense services provider.

(3) The court may make a determination of indigency at any time.

Amended by Chapter 180, 2012 General Session

77-32-303. Standard for court to appoint noncontracting attorney or order the provision of defense resources -- Hearing.

(1) If a county or municipality has contracted or otherwise provided for a defense services provider, the court may not appoint a noncontracting attorney under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, unless the court:

- (a) conducts a hearing with proper notice to the county clerk or municipal recorder, with a copy of the notice provided to the prosecutor, to consider the

authorization or designation of a noncontract attorney; and

(b) makes a finding that there is a compelling reason to authorize or designate a noncontracting attorney for the indigent defendant.

(2) Except as provided in Subsection (3), if a county or municipality has contracted or otherwise provided for a defense services provider, the court may not order under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, and the county or municipality may not provide defense resources for a defendant who has retained private counsel.

(3) The court may order, and the county or municipality may provide, defense resources to a defendant represented by private counsel only if:

(a) the court conducts a hearing with proper notice to the county clerk or municipal recorder, with a copy of the notice provided to the prosecutor;

(b) the court conducts an in camera review of the defense contract, a full accounting of the defense retainer, anticipated costs of defense resources and other relevant defense records and finds by clear and convincing evidence all of the following:

(i) the defendant would be prejudiced by the substitution of a contracted defense services provider and any prejudice cannot be remedied by a continuance or other alternative means;

(ii) at the time of retention of private counsel, the defendant and attorney entered into a written contract which provided that the defendant had the means to pay for fees and defense resources;

(iii) there has been an unforeseen change in circumstances which requires defense resources beyond the defendant's ability to pay; and

(iv) all of the above representations are made in good faith and are not calculated to allow the defendant or defense attorney to avoid the requirements of this section.

(4) The court may not order the defense services provider to act as co-counsel with a privately retained legal counsel as a means of circumventing the requirements of this section.

Amended by Chapter 180, 2012 General Session

77-32-304. Duties of assigned counsel -- Compensation.

(1) When representing an indigent, the assigned counsel shall:

(a) counsel and defend the indigent at every stage of the proceeding following assignment; and

(b) file any first appeal of right or other remedy before or after conviction that the assigned counsel considers to be in the interest of justice, except for other and subsequent discretionary appeals or discretionary writ proceedings.

(2) An assigned counsel may not represent an indigent in any discretionary appeal or action for a discretionary writ, other than in a meaningful first appeal of right to assure the indigent an adequate opportunity to present the indigent's claims fairly in the context of the appellate process of this state.

(3) An assigned counsel for an indigent shall be entitled to compensation upon:

- (a) approval of the district court where the original trial was held;
- (b) a showing that:
 - (i) the indigent has been denied a constitutional right; or
 - (ii) there was newly discovered evidence that would show the indigent's innocence; and
- (c) a clear showing that the legal services rendered by counsel were:
 - (i) other than that required under this chapter or under a separate fee arrangement; and
 - (ii) necessary for the adequate defense of the indigent and not for the purpose of delaying the judgment of the original trier of fact.

Amended by Chapter 180, 2012 General Session

77-32-304.5. Reasonable compensation for defense counsel for indigents.

- (1) This section does not apply to any attorney acting as a defense services provider or otherwise under contract with the county or municipality for defense of an indigent person.
- (2) (a) The county or municipality shall pay reasonable compensation to any attorney assigned by the court under Subsection 77-32-306 at the conclusion of the representation or any segment of the representation, as provided in Subsections (2)(b), (c), (d), and (e):
 - (i) before the district or justice courts, including interlocutory appeals; and
 - (ii) before the appellate court on a first appeal of right.
- (b) The legislative body of each county and municipality shall establish and annually review guidelines for the rate of compensation, taking into account:
 - (i) the nature and complexity of the case;
 - (ii) the competency and years of experience in criminal defense of the assigned attorney;
 - (iii) the adjusted net hourly rate incurred by the county or municipality for a prosecutor or public defender of equivalent experience and competency; and
 - (iv) the prevailing rates within the judicial district for comparable services.
- (c) If the legislative body of a county or municipality does not establish the rate guidelines, the rate of compensation shall be determined by the trial judge or a judge other than the trial judge if requested by:
 - (i) the assigned attorney; or
 - (ii) the county or municipality.
- (d) If the assigned attorney disagrees with the amount of compensation paid or contemplated for payment by the county or municipality, the assigned attorney shall nonetheless continue to represent the indigent defendant and may file a claim against:
 - (i) the county pursuant to Section 17-50-401 or 17-50-401.1, as applicable, in which event the period for a denial by the county shall be 20 days; or
 - (ii) the municipality pursuant to Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.
- (e) In determining the reasonable compensation to be paid to defense counsel under Subsections (2)(c) and (d), the court shall consider the factors contained in

Subsections (2)(b)(i) through (iv).

(f) The total compensation in a noncapital case may not, without prior court approval following a hearing, exceed:

(i) \$3,500 for each assigned attorney in a case in which one or more felonies is charged;

(ii) \$1,000 for each assigned attorney in a case in which only misdemeanors or lesser offenses are charged; or

(iii) \$2,500 for each assigned attorney in the representation of an indigent in an appellate court on a first appeal of right.

Amended by Chapter 17, 2012 General Session

Amended by Chapter 180, 2012 General Session

77-32-305. Expenses of printing briefs, depositions, and transcripts.

The state, county, or municipal agency that prosecuted the indigent at trial is responsible for the expenses of printing or typewriting briefs on any first appeal of right, including expenses of depositions and other transcripts.

Renumbered and Amended by Chapter 354, 1997 General Session

77-32-305.5. Reimbursement of extraordinary expense.

(1) For the purposes of this section, an "extraordinary expense" means the collective expense which exceeds \$500 for defense resources or any particular service or item such as experts, investigators, surveys, or demonstrative evidence.

(2) The county or municipality shall reimburse expenses, exclusive of overhead and extraordinary expense not approved by the court in accordance with this chapter, reasonably incurred by assigned attorneys for indigent defendants through a contracted defense services provider or if so ordered by the court based on a hearing held in accordance with Subsections 77-32-303(2) and (3), or for an appointed counsel under Section 77-32-304.5.

(3) The assigned attorney shall file a motion with the court for approval of the proposed expenditure for any extraordinary expense before the expense is incurred. The motion shall be heard and ruled upon by a judge other than the trial judge if so requested by either party or upon the motion of the trial judge.

Amended by Chapter 180, 2012 General Session

77-32-306. County or municipal legislative body to provide legal defense.

(1) The county or municipal legislative body shall either:

(a) contract with a defense services provider; or

(b) authorize the court to provide the services prescribed by this chapter by assigning a qualified attorney in each case.

(2) A county may create a county legal defender's office to provide for the legal defense as prescribed by this chapter.

(3) A county legal defender's office may, through the county legislative body

contract with other counties and municipalities within a judicial district to provide the legal services as prescribed.

(4) Counties and municipalities are encouraged to enter into interlocal cooperation agreements pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, for the provision of legal defense, including multiple counties and municipalities contracting with either a private defense services provider or with a legal defender's office. An interlocal agreement may provide for:

(a) the creation of or contract with a private defense services provider, as defined in Subsection 77-32-201(4);

(b) multiple counties or municipalities to contract with a county legal defender's office, as defined in Subsection 77-32-201(7); or

(c) the creation of an interlocal entity under the provisions of Section 11-13-203.

(5) When a county or municipality has contracted under Subsection (1)(a) or a county has created a legal defender's office as provided under Subsection (2) to provide the legal defense resources required by this chapter, the legal services provider is the exclusive source from which the legal defense may be provided, unless the court finds a compelling reason for the appointment of noncontracting attorneys and defense resources, under the provisions of Section 77-32-302 or 77-32-303, in which case the judge shall state the compelling reason and the findings of the hearing held under Subsections 77-32-303(2) and (3) on the record.

(6) A county or municipality may, by ordinance, provide for some other means which are constitutionally adequate for legal defense of indigents.

Amended by Chapter 180, 2012 General Session

77-32-307. Expenditures of county or municipal funds declared proper -- Tax levy authorized.

(1) An expenditure by any county or municipality is considered a proper use of public funds if the expenditure is necessary to carry out the purposes defined in this chapter.

(2) A donation to a nonprofit legal aid or other association charged with the duty to provide the services is a proper use of public funds.

(3) Any county or municipality of the state is authorized to levy and collect taxes to meet the requirements of this chapter.

Amended by Chapter 180, 2012 General Session

77-32-308. Pro bono criminal representation -- Liability limits.

Counsel assigned by a court to represent an indigent in criminal, post-conviction, or habeas corpus proceedings is immune from suit if the attorney provides the legal services:

(1) at no cost; or

(2) for only a substantially reduced cost that is applied to, but does not cover, expenses of the service; and

(3) without gross negligence or willful misconduct.

Renumbered and Amended by Chapter 354, 1997 General Session

77-32-401. Indigent Defense Funds Board -- Members -- Administrative support.

(1) There is created within the Division of Finance the Indigent Defense Funds Board composed of the following nine members:

(a) two members who are current commissioners or county executives of participating counties appointed by the board of directors of the Utah Association of Counties;

(b) one member at large appointed by the board of directors of the Utah Association of Counties;

(c) two members who are current county attorneys of participating counties appointed by the Utah Prosecution Council;

(d) the director of the Division of Finance or his designee;

(e) one member appointed by the Administrative Office of the Courts; and

(f) two members who are private attorneys engaged in or familiar with the criminal defense practice appointed by the members of the board listed in Subsections (1)(a) through (e).

(2) Members shall serve four-year terms. One of the county commissioners and one of the county attorneys appointed to the initial board shall serve two-year terms, and the remaining other members of the initial board shall be appointed for four-year terms. After the initial two-year terms of the county commissioner and county attorney, those board positions shall have four-year terms.

(3) A vacancy is created if a member appointed under:

(a) Subsection (1)(a) no longer serves as a county commissioner or county executive; or

(b) Subsection (1)(c) no longer serves as a county attorney.

(4) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(5) The board may contract for administrative support for up to \$15,000 annually to be paid proportionally from each fund.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) Per diem and expenses for board members shall be paid proportionally from each fund.

(8) Five members shall constitute a quorum and, if a quorum is present, the action of a majority of the members present shall constitute the action of the board.

Amended by Chapter 180, 2012 General Session

77-32-401.5. Interim board -- Members -- Administrative support -- Duties.

(1) Until the Indigent Defense Funds Board authorized by Section 77-32-401 is constituted after achieving the number of participating counties required by Sections 77-32-604 and 77-32-704, an interim board may be created within the Division of Finance composed of the following three members:

(a) a county commissioner from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties;

(b) a county attorney from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties; and

(c) a representative appointed by the Administrative Office of the Courts.

(2) The Division of Finance shall provide administrative support to the interim board.

(3) (a) Members shall serve until the Indigent Defense Funds Board is constituted.

(b) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The per diem and travel expenses for board members under Subsection (4) shall be paid from the Indigent Inmate Trust Fund in Section 77-32-502.

(6) Until the Indigent Defense Funds Board is constituted, the interim board shall be authorized to carry out any responsibility provided to the Indigent Defense Funds Board in statute as it relates to Chapter 32, Part 5, Indigent Inmates.

(7) The action by two members present shall constitute the action of the board.

Amended by Chapter 286, 2010 General Session

77-32-402. Duties of board.

(1) The board shall:

(a) establish rules and procedures for the application by counties for disbursements, and the screening and approval of the applications for money from the:

(i) Indigent Inmate Trust Fund established in Part 5;

(ii) Indigent Capital Defense Trust Fund established in Part 6; and

(iii) Indigent Felony Defense Trust Fund established in Part 7;

(b) receive, screen, and approve or disapprove the application of counties for disbursements from each fund;

(c) calculate the amount of the annual contribution to be made to the funds by each participating county;

- (d) prescribe forms for the application for money from each fund;
- (e) oversee and approve the disbursement of money from each fund as provided in Sections 77-32-401, 77-32-502, 77-32-601, and 77-32-701;
- (f) establish its own rules of procedure, elect its own officers, and appoint committees of its members and other people as may be reasonable and necessary;
- (g) negotiate, enter into, and administer contracts with legal counsel, qualified under and meeting the standards consistent with this chapter, to provide defense counsel services to:
 - (i) indigents prosecuted in participating counties for serious offenses in violation of state law; and
 - (ii) an indigent inmate who is incarcerated in certain counties.
- (2) The board may provide to the court a list of attorneys qualified under Utah Rules of Criminal Procedure, Rule 8, with which the board has a preliminary contract to defend indigent cases for an assigned rate.

Enacted by Chapter 354, 1997 General Session

77-32-501. Contracts for defense of indigent inmates -- Qualifications -- Prosecutorial duties.

- (1) The board shall enter into contracts with qualified legal defense counsel to provide defense counsel services for an indigent inmate who is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501, is charged with having committed a crime within that facility, and will require defense counsel.
- (2) Payment for the representation, costs, and expenses of legal defense counsel shall be made from the Indigent Inmate Trust Fund as provided in Section 77-32-502.
- (3) The defense counsel shall maintain the minimum qualifications as provided in Section 77-32-301.
- (4) The county attorney or district attorney of a county of the third, fourth, fifth, or sixth class shall function as the prosecuting entity.
- (5) (a) The county of the third, fourth, fifth, or sixth class where a state prison is located may impose an additional tax levy by ordinance at .0001 per dollar of taxable value in the county.
- (b) If the county governing body imposes the additional tax levy by ordinance, the money shall be deposited in the Indigent Inmate Trust Fund as provided in Section 77-32-502 to fund the purposes of this section.
- (c) Upon notification that the fund has reached the amount specified in Subsection 77-32-502(6), the county shall deposit money derived from the levy into a county account used exclusively to provide defense counsel and defense related services for indigent defendants.
- (d) A county that chooses not to impose the additional levy by ordinance may not receive any benefit from the Indigent Inmate Trust fund.

Amended by Chapter 80, 2009 General Session

77-32-502. Indigent Inmate Trust Fund -- Creation.

(1) There is created a private-purpose trust fund known as the "Indigent Inmate Trust Fund" to be disbursed by the Division of Finance at the direction of the board and in accordance with contracts made under Section 77-32-402.

(2) Money deposited in this trust fund only shall be used:

(a) to pay for the representation, costs, and expenses of legal defense counsel for an indigent inmate in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501 who is charged with having committed a crime within the facility, and who will require defense counsel; and

(b) for administrative costs pursuant to Section 77-32-401.

(3) The trust fund consists of:

(a) proceeds received from counties that impose the additional tax levy by ordinance under Subsection 77-32-501(5) which shall be the total county obligation for payment of costs listed in Subsection (2) for defense of indigent inmates;

(b) appropriations made to the fund by the Legislature; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) In any calendar year in which the fund runs a deficit, or is projected to run a deficit, the board shall request a supplemental appropriation from the Legislature in the following general session to pay for the deficit. The state shall pay any or all of the reasonable and necessary money for the deficit into the Indigent Inmate Trust Fund.

(6) The fund shall be capped at \$1,000,000.

(7) The Division of Finance shall notify all contributing counties when the fund approaches \$1,000,000 and provide each county with the amount of the balance in the fund.

(8) Upon notification by the Division of Finance that the fund is near the limit imposed in Subsection (6), the counties may contribute enough money to enable the fund to reach \$1,000,000 and discontinue contributions until notified by the Division of Finance that the balance has fallen below \$1,000,000, at which time counties that meet the requirements of Section 77-32-501 shall resume contributions.

Amended by Chapter 80, 2009 General Session

77-32-601. Establishment of Indigent Aggravated Murder Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense Trust Fund.

(2) (a) There is established a private-purpose trust fund known as the "Indigent Aggravated Murder Defense Trust Fund."

(b) The fund shall be disbursed by the Division of Finance at the direction of the board and subject to this chapter.

(3) The fund consists of:

(a) money received from participating counties as provided in Sections 77-32-602 and 77-32-603;

(b) appropriations made to the fund by the Legislature as provided in Section 77-32-603; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving aggravated murder.

(6) Money allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for aggravated murder in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Amended by Chapter 303, 2011 General Session

77-32-602. County participation.

(1) (a) Any county may participate in the fund subject to the provisions of this chapter. Any county that chooses not to participate, or is not current in its contributions, is ineligible to receive money from the fund.

(b) The board may revoke a county's participation in the fund if the county fails to pay its assessments when due.

(2) To participate in the fund, the legislative body of a county shall:

(a) adopt a resolution approving participation in the fund and committing that county to fulfill the assessment requirements as set forth in Subsection (3) and Section 77-32-603; and

(b) submit a certified copy of that resolution together with an application to the board.

(3) By January 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 77-32-603.

(4) Any participating county may withdraw from participation in the fund upon:

(a) adoption by its legislative body of a resolution to withdraw; and

(b) notice to the board by January 1 of the year prior to withdrawal.

(5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay its assessments when due, shall forfeit the right to:

(a) any previously paid assessment;

(b) relief from its obligation to pay its assessment during the period of its participation in the fund; and

(c) any benefit from the fund, including reimbursement of costs which accrued after the last day of the period for which the county has paid its assessment.

Amended by Chapter 333, 1998 General Session

77-32-603. County and state obligations.

(1) (a) Except as provided in Subsection (1)(b), each participating county shall pay into the fund annually an amount calculated by multiplying the average of the percent of its population to the total population of all participating counties and of the percent its taxable value of the locally and centrally assessed property located with that county to the total taxable value of the locally and centrally assessed property to all participating counties by the total fund assessment for that year to be paid by all participating counties as is determined by the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any calendar year.

(b) The fund minimum shall be equal to or greater than 50 cents per person of all counties participating.

(c) The amount paid by the participating county pursuant to Subsection (1) shall be the total county obligation for payment of costs pursuant to Section 77-32-601.

(2) (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment in addition to the assessment provided in Subsection (1).

(b) The equity payment shall be determined by the board and represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous two years.

(3) If the fund balance after contribution by the state and participating counties is insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote may terminate the fund.

(4) If the fund is terminated, all remaining funds shall continue to be administered and disbursed in accordance with the provision of this chapter until exhausted, at which time the fund shall cease to exist.

(5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the deficit.

(b) In the calendar year following a deficit year, the board shall increase the assessment required by Subsection (1) by an amount at least equal to the deficit of the previous year, which combined amount becomes the base assessment until another deficit year occurs.

(6) In any calendar year in which the fund runs a deficit, or is projected to run a deficit, the board shall request a supplemental appropriation to pay for the deficit from the Legislature in the following general session. The state shall pay any or all of the reasonable and necessary money for the deficit into the Indigent Capital Defense Trust Fund.

Amended by Chapter 333, 1998 General Session

77-32-604. Application and qualification for fund money.

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in the defense of an indigent for capital felonies in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, 1998.

(3) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection 77-32-602(2).

Amended by Chapter 209, 2001 General Session

77-32-701. Establishment of Indigent Felony Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Felony Defense Trust Fund.

(2) (a) There is established a private-purpose trust fund known as the "Indigent Felony Defense Trust Fund."

(b) The fund shall be disbursed by the Division of Finance at the direction of the board and subject to the provisions of this chapter.

(3) The fund consists of:

(a) money received from participating counties as provided in Sections 77-32-702 and 77-32-703;

(b) a one-time appropriation by the Legislature; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with the financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving felony offenses.

(6) Money allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for a felony in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Amended by Chapter 303, 2011 General Session

77-32-702. County participation.

(1) (a) Any county may participate in the fund subject to the provisions of this

chapter. Any county that chooses not to participate, or is not current in its contributions, is ineligible to receive money from the fund.

(b) The board may revoke a county's participation in the fund if the county fails to pay its assessments when due.

(2) To participate in the fund, the legislative body of a county shall:

(a) adopt a resolution approving participation in the fund and committing that county to fulfill the assessment requirements as set forth in Subsection (3) and Section 77-32-703; and

(b) submit a certified copy of that resolution together with an application to the board.

(3) By January 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 77-32-703.

(4) Any participating county may withdraw from participation in the fund upon:

(a) adoption by its legislative body of a resolution to withdraw; and

(b) notice to the board by January 1 of the year prior to withdrawal.

(5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay its assessments when due, shall forfeit the right to:

(a) any previously paid assessment;

(b) relief from its obligation to pay its assessment during the period of its participation in the fund; and

(c) any benefit from the fund, including reimbursement of costs which accrued after the last day of the period for which the county has paid its assessment.

(6) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection (2).

Amended by Chapter 333, 1998 General Session

77-32-703. Computing participating county assessments.

(1) The board shall determine the amount annually each county shall pay into the fund.

(2) (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (1).

(b) The equity payment shall be determined by the board and represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous two years.

(3) (a) If the fund runs a deficit during any calendar year, the participating counties shall pay an amount equal to the deficit in the fund by the end of the first quarter of the following year.

(b) In the calendar year following a deficit year, the board shall increase the assessment required by Subsection (1) by an amount at least equal to the deficit of the previous year, which combined amount becomes the base assessment until another

deficit year occurs.

(4) After the initial year of the fund, if the participating counties are unable to replenish the fund annually to at least \$200,000, the board by a majority vote may terminate the fund.

(5) If the fund is terminated, all remaining funds shall continue to be administered and disbursed in accordance with the provision of this chapter until exhausted, at which time the fund shall cease to exist.

Amended by Chapter 333, 1998 General Session

77-32-704. Application and qualification for fund money.

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in excess of \$20,000 in the defense of an indigent for felony offenses in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, 1998.

(3) (a) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(b) Fees for counsel and reimbursement for defense costs of an indigent are as follows:

(i) \$20,000 or more shall be paid from the fund; and

(ii) up to \$20,000 shall be paid by the participating county.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection 77-32-702(2).

Amended by Chapter 333, 1998 General Session